

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CONLEY WOLFORD,

Plaintiff,

v.

CIVIL ACTION NO. 1:07CV83
(Judge Keeley)

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL SECURITY,

Defendant.

AMENDED¹ ORDER

Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 4.01(d), on June 19, 2007, the Court referred the Application to Proceed Without Prepayment of Fees and Affidavit to United States Magistrate James E. Seibert with directions to submit to the Court proposed findings of fact and a recommendation for disposition. On July 2, 2007, Magistrate Judge Seibert filed his Report and Recommendation directing the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e), Fed. R. Civ. P., to file with the Clerk of Court any written

¹ The sole purpose of the amended order is to direct the Clerk to direct the United States Marshal Service to serve the complaint pursuant to Federal Rule of Civil Procedure 4(c)(2) and to direct that any recovery in this action is subject to payment of fees and costs, including service or process fees and the \$350.00 filing fee.

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objections within ten (10) days after being served with a copy of the Report and Recommendation and further advised the parties that failure to file objections would result in a waiver of the right to appeal from the judgment of this Court. On July 12, 2007, counsel for the plaintiff, Conley Wolford ("Wolford"), filed objections to Magistrate Judge Seibert's report and recommendation.

On August 21, 2007, the Court directed counsel for the plaintiff to file a listing of Wolford's monthly expenses on or before September 4, 2007. On September 4, 2007, counsel filed a report that indicated that the plaintiff's monthly expenses total \$1,228.00 and, therefore, exceed his monthly income of \$630.00.

The Court has reviewed the plaintiff's monthly expenses filed in this case and has determined that plaintiff cannot reasonably afford to pay the filing fee or a portion thereof. Accordingly, based on the information documenting plaintiff's monthly expenses that was not available to the magistrate judge, the Court **GRANTS** plaintiff's Motion for Leave to Proceed *In Forma Pauperis* (dkt. no. 2).

The Clerk of the Court is directed to notify the United States Marshal Service to serve process pursuant to Federal Rule of Civil Procedure 4(c)(2). Any recovery in this action will be subject to

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payment of fees and costs including service of process fees and the \$350.00 filing fee.

The Clerk of Court is further directed to transmit copies of this Order to counsel of record.

DATED: November 30, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE